

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Ervin M. Lopez,)	
)	C/A No. 4:15-4210-BHH-TER
Plaintiff,)	
)	
vs.)	REPORT AND RECOMMENDATION
)	
Larry Cartledge, Warden,)	
Florence Mauney, A/W Security,)	
Stephen Claytor, A/W Programs Services,)	
Curtis Earley, Major of Security,)	
Charles Williams, Captain,)	
)	
Defendants.)	
_____)	

PROCEDURAL BACKGROUND

Plaintiff, proceeding *pro se*, filed this action under 42 U.S.C. § 1983¹ on October 13, 2015, alleging a violation of his constitutional rights. On November 1, 2016, Defendants filed a motion for summary judgment along with a memorandum and exhibit in support thereof. (Doc. #51). As the Plaintiff is proceeding *pro se*, the court issued an order on or about November 3, 2016, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the motion for summary judgment procedure and the possible consequences if he failed to respond adequately to Defendant's motion. (Doc. #54). Plaintiff has not filed a response.

RULE 41(B) DISMISSAL

A complaint may be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil

¹All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(d), DSC. Because this is a dispositive motion, the report and recommendation is entered for review by the district judge.

Procedure for failure to prosecute and/or failure to comply with orders of the court. Ballard v. Carlson, 882 F.2d 93 (4th Cir. 1989), cert. denied, 493 U.S. 1084 (1990), and Chandler Leasing Corp. v. Lopez, 669 F.2d 919 (4th Cir. 1982). In considering whether to dismiss an action pursuant to Rule 41(b), the court is required to consider four factors:

- (1) the degree of plaintiff's responsibility in failing to respond;
- (2) the amount of prejudice to the defendant;
- (3) the history of the plaintiff in proceeding in a dilatory manner; and,
- (4) the existence of less drastic sanctions other than dismissal.

Davis v. Williams, 588 F.2d 69 (4th Cir. 1978).

In the present case, the Plaintiff is proceeding pro se so he is entirely responsible for his actions. It is solely through Plaintiff's neglect, and not that of an attorney, that no responses have been filed. Plaintiff has not responded to Defendants' motion for summary judgment or the court's orders requiring him to respond. No other reasonable sanctions are available. Accordingly, it is recommended that this action be dismissed pursuant to Fed. R. Civ. Proc. 41(b).

CONCLUSION

Based on the above reasoning, it is RECOMMENDED that this action be dismissed for failure to prosecute pursuant to Fed. R. Civ. Proc. 41(b) with prejudice.

Respectfully submitted,

s/Thomas E. Rogers, III
Thomas E. Rogers, III
United States Magistrate Judge

December 15, 2016
Florence, South Carolina

The parties' attention is directed to the important information on the attached notice.